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In re Application of VROUENRAETS et al :
U.S. Application No.: 09/980,088 :
Int. Application No.: PCT/GB00/01215 : DECISION
Int. Filing Date: 30 March 2000 :
Attorney Docket No.: 1626-3 :
For: PHOTODYNAMIC THERAPY COMPOUNDS :

This is in response to applicant's "Petition to Correct Inventorship Under 37 CFR §1.48" filed 23 August 2002, which is being treated as a petition under 37 CFR 1.497(d).

BACKGROUND

On 30 March 2000, applicant filed international application PCT/GB00/01215. A copy of the international application was communicated to the USPTO from the International Bureau on 11 October 2001. The twenty-month period for paying the basic national fee in the United States expired at midnight on 30 November 2001.

On 30 November 2001, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 24 January 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 23 August 2002, applicant filed the present petition under 37 CFR 1.497(d) along with an executed declaration.

DISCUSSION

37 CFR 1.497(d) (effective 07 November 2000) states,

If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the

international application, the oath or declaration must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in § 1.17(i); and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

With regard to item (1) above, applicant has provided the requisite statements.

With regard to item (2) above, applicant has provided the requisite processing fee.

With regard to item (3) above, in situations where an assignee consents to a correction of inventorship, ownership of the application must be established. See MPEP 324. Under 37 CFR 3.73(b), ownership is established by documentary evidence of a chain of title from the original owner to the assignee. In the present case, the petition does not state whether the application has been assigned. Thus, the correction of inventorship cannot be approved at the present time.

It is further noted that the declaration filed with the petition is improper because the last name of the third listed inventor does not match that shown on the international application.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.497(d) is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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